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STATE OF NEVADA

PUBLIC UTILITIES COMMISSION

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ALAINA BURTENSHAW
Commissioner

DAVID NOBLE
Commissioner

STEPHANIE MULLEN
Executive Director

October 15, 2015

VIA EMAIL

Attn: Maggie McLetchie, Esq.
maggie@nvlitigation.com

Re: Records Request

Ms. McLetchie:

I received your letter, dated October 6, 2015, requesting confirmation that the Public Utilities Commission of Nevada ("Commission") identified and/or disclosed all documents responsive to the public records request submitted to the Commission by your client, Evlondo Cooper, on August 25, 2015. Your letter further requests an explanation regarding the absence of text messages, cellular telephone records, calendar entries, and sign-in logs from the documents identified and/or disclosed on September 11, 2015, in the Commission's response to your client's request for public records.

I can confirm that the only responsive public records being withheld are the confidential documents identified in the Commission's response dated September 11, 2015. Specifically, the Commission is withholding: Commissioner Noble's handwritten notes from a cybersecurity meeting held at Commissioner Noble's office on January 28, 2015; personally identifiable information pertaining to Commissioner Noble's family members and an individual whose resume was forwarded to Commissioner Noble by an NV Energy employee; and the private telephone number of Paul Caudill, NV Energy's President.

The Commission's September 11, 2015, response did not contain text messages, cellular telephone records, or personal calendar entries because there are no such public records of the Commission responsive to your client's request. Chapter 239 of the Nevada Revised Statutes (the "Nevada Public Records Act" or "NPR") provides that "all public books and public records of a governmental entity" must be open for public inspection.¹ The NPR does not require disclosure of public employees' personal records such as telephone call logs, text messages or any other communications sent or received through

¹ NRS 239.010(1).

private accounts,² or appointment/calendar materials that are created solely for an individual employee's convenience and that may be disposed of at the individual's discretion.³ With regard to sign-in logs, the Commission's forthcoming response to your client's most recent records request⁴ will contain copies of reception logs signed by visitors to the Commission's offices between February 17, 2012, and October 8, 2015.

Please feel free to contact me with any further questions related to this request for public records.

Sincerely,



Garrett Weir
Assistant General Counsel
Public Utilities Commission of Nevada
(775) 684-6185
gweir@puc.nv.gov

cc: Carolyn E. Tanner, General Counsel
Stephanie Mullen, Executive Director

² See *Competitive Enter. Inst. v. Office of Sci. and Tech.*, 82 F.Supp.3d 228 (2015) (holding that governmental entities do not, merely by way of the employer/employee relationship, gain control over their employees' personal email accounts for the purposes of responding to records requests) and *City of San Jose v. Superior Court*, 169 Cal.Rptr.3d 840 (2014) (holding: that the writings of individual government officials and employees sent or received on their private devices and their private accounts are not public records subject to disclosure; that the public's right to access information does not outweigh the individual's right to privacy; and that a state's public records act should be interpreted to be consistent with its open meeting law to protect the "carefully crafted private space" in which public officials may discuss public issues privately and confidentially).

³ See *Consumer Fed'n of Am. v. Dep't of Agriculture*, 455 F.3d 283 (2006) (holding that the electronic appointment calendar of the assistant administrator of the United States Department of Agriculture was not an "agency record" subject to public disclosure, given that the calendar was distributed only to his secretaries and was not relied upon by other agency employees); *Bloomberg, L.P. v. U.S. Securities and Exchange Comm'n*, 357 F.Supp.2d 156 (2004) (holding that the computerized calendar of the Chairman of the Securities and Exchange Commission ("SEC") was not an "agency record," and was therefore not subject to public disclosure, because the calendar was created for the Chairman's personal use and was circulated to only a limited number of agency employees, even though the calendar contained schedules of business meetings and was maintained by the SEC and backed-up on an SEC server every 30 days); and *Bureau of Nat'l Affairs, Inc. v. U.S. Dep't of Justice*, 742 F.2d 1484 (1984) (holding that the mere possession of records by an agency official does not make the records subject to public disclosure; rather, the agency itself must exercise control over or possession of the records for them to be treated as "agency records").

⁴ On October 9, 2015, Evlondo Cooper submitted a request for Commissioner Noble's "total hard-copy and electronic calendar(s)" and the Commission's "visitor sign-in register[s]."